

BRB No. 99-0255 BLA

JAMES E. DALTON)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED:
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,))	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of John C. Holmes, Administrative Law Judge, United States Department of Labor.

James E. Dalton, Big Stone Gap, Virginia, *pro se*.

Sarah M. Hurley (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, SMITH and BROWN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order (97-BLA-883) of Administrative Law Judge John C. Holmes denying benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* This case has previously been before the Board.¹ In its

¹Claimant has filed three claims for benefits. The first two claims were filed on August 4, 1970 and October 20, 1977 and denied on December 12, 1974 and April 3, 1979, respectively. Director's Exhibits 14, 15. Claimant filed the instant claim on June 22, 1982. Director's Exhibit 1. A prior procedural history of the instant claim is

most recent Decision and Order, the Board remanded the case to the administrative law judge for the sole purpose of reconsidering the x-ray evidence to determine whether claimant established a change in conditions pursuant to 20 C.F.R. §725.310. *Dalton v. Director, OWCP*, BRB No.97-1568 BLA (July 27, 1998)(unpublished.).

On remand, the administrative law judge noted the presence of additional positive x-ray readings, but found the x-ray evidence insufficient to establish the existence of pneumoconiosis, and thus insufficient to establish a change in conditions pursuant to Section 725.310. Accordingly, benefits were denied. Claimant appeals, generally contending that the administrative law judge erred in failing to award benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the denial of benefits as supported by substantial evidence.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In the instant case, the administrative law judge, as directed, reconsidered the x-ray evidence and found that in weighing the x-rays "quantitatively and qualitatively, the negatives clearly predominate."² Decision and Order at 2. See *Adkins v. Director, OWCP*, 948 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Inasmuch as the preponderance of the x-ray evidence by highly qualified readers is negative, we, affirm the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis.

contained in our Decision and Order dated July 27, 1998. *Dalton v. Director, OWCP*, BRB No. 97-1568 BLA (July 27, 1998)(unpublished.).

²The preponderance of the x-ray readings by highly qualified readers, those who are either B-readers or Board certified radiologists, is negative for the existence of pneumoconiosis. Of the properly classified readings which are not rereadings, eleven readings are negative, and four are positive for the existence of pneumoconiosis. See 20 C.F.R. §727.206 (b)(1).

Accordingly, the Decision and Order of the administrative law judge denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge